

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT L. HARRINGTON,

Petitioner,

Case No. 1:05-cv-468

v

Hon. Wendell A. Miles

KEN McKEE, WARDEN,
BELLAMY CREEK CORRECTIONAL
FACILITY,

Respondent.

ORDER ON MOTION TO TRANSFER PETITION
TO THE UNITED STATES COURT OF APPEALS

On July 8, 2005, Michigan prisoner Robert L. Harrington filed a petition for writ of habeas corpus. The respondent was ordered to and did file an answer to the petition. The respondent has also filed Rule 5 materials and supplemental Rule 5 materials. Currently, the matter is before the court on the respondent's motion to transfer the petition to the United States Court of Appeals as a "second or successive" under 28 U.S.C. § 2244(b) (docket no. 67). In his motion, the respondent argues that petitioner was denied relief on the merits in a prior habeas action which he filed in the Eastern District of Michigan, Harrington v. Curtis, No. 2:98cv73787, Opinion and Order Denying Petition for Writ of Habeas Corpus (E.D. Mich. Feb. 23, 2000).

A review of the Eastern District case indicates that it does not involve the same Robert Harrington who is the petitioner in this case. Michigan Department of Corrections records indicate that there are multiple individuals named Robert Harrington currently in the

department's custody. The Eastern District petitioner has a different prisoner number (No. 211906) than the petitioner in this case (No. 171675), was born on a different date, and is serving a different sentence at a different facility. The circumstances and dates of the crimes for which each of these petitioners was convicted are entirely different. A cursory investigation by the respondent would have revealed that the Eastern District case was filed by a different person.

In short, the respondent has not established that the petitioner has filed a "second or successive" petition, and the motion to transfer to the United States Court of Appeals is therefore **DENIED.**

Entered this 20th day of October, 2008.

/s/ Wendell A. Miles
Wendell A. Miles, Senior Judge